479.

SUPREME COURT OF THE UNITED STATES.

No. 74.

WILLIAM H. TRACY AND JOHN B. BALESTIER, PLAINTIFFS IN ERROR.

VERSUS

SAMUEL SWARTWOUT.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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Circuit Court of the United States for the Southern District of New York. In the Second Circuit.

Pleas before the Judges of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, at the City Hall of the City of New York, of October Term, in the year of our Lord one thousand eight hundred and thirty-three.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Be it remembered that on the seventh day of August, one thousand eight hundred and thirty-four, before the judges of the circuit court of the United States for the southern district of New York, in the second circuit at the city hall of the city of New York, comes Samuel Swartwout, by William M. Price, his attorney, and suggests to the said judges that William H. Tracy and John B. Balestier have commenced a suit against him in the superior court of the

the counsel of the plaintiff think otherwise, and are desirous of taking the opinion of the Supreme Court on the subject; the objection to certifying the point of difference will be reserved for their consideration, and the clerk is directed to make out the certificate accordingly.

UNITED STATES,
District of Pennsylvania, } *sct.*

I certify the foregoing to be a true statement of the points upon which the opinions of the judges of the circuit court of the United States for the district of Pennsylvania, in the third circuit were opposed. Stated under the direction of the said judges.

In testimony whereof, I have hereunto subscribed my name, and
[SEAL.] affixed the seal of said circuit court at Philadelphia, this seventh day of January, A. D. 1835, and fifty-ninth year of the independence of the said United States.

FRA. HOPKINSON,
Clerk Cir. Court.

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city of New York, in the State of New York, for acts done by him under the revenue laws, as collector for the district of the city of New York; and he prays that the said suit may be docketted in this court as if commenced here, and that the clerk be ordered to issue the proper process to remove the said suit and all the proceedings therein into this court. Whereupon, the said judges send unto the justices of the said superior court a writ-close commanding them to certify the pleadings and proceedings in the suit, and returned them into this court on the second Tuesday of September then next. Whereupon, the justices of the said superior court, on the twenty-seventh day of September, 1834, did return the pleadings and proceedings in the said suit before them as follows, to wit:

CITY AND COUNTY OF NEW YORK, ss.

William H. Tracy and John B. Balestier, plaintiffs, by David Dudley Field, their attorney, complain of Samuel Swartwout, defendant, of a plea of trespass on the case.

For that, whereas, heretofore, to wit, on the seventeenth day of October, in the year of our Lord one thousand eight hundred and thirty-two, the said defendant was, and still is, collector of the customs for the district of the city of New York, under and according to the laws of the United States of America, and acting in the said office; and the said plaintiffs heretofore, to wit, on the same day and year aforesaid, and while the said defendant was such collector as aforesaid, were the owners of a large quantity, to wit, one hundred and seventy-eight casks of syrup of sugar-cane, and had imported or brought the same into the port of New York from the island of Puerto Rico, in the West Indies, and were desirous of entering the same with the said defendant as collector as aforesaid, and giving a bond or bonds for the duties thereon, according to law, that the said plaintiffs might take the same to be disposed of as they should see fit, for use or consumption thereof in the United States of America. And the said plaintiff aver that upon and after the arrival of the said syrup of sugar-cane at the port of New York, the said plaintiffs so being the owners thereof as aforesaid, the said defendant being such collector as aforesaid, gave, in due form of law, notice to the said defendant of the arrival of the said goods as aforesaid, and of their wish to enter the same and give bonds for the duties thereon, and to receive a permit for the landing of the said syrup of sugar-cane, that the said plaintiffs might have the use or benefit thereof, and then and there, to wit, on the day and year last aforesaid, and at the city and in the county of New York aforesaid, offered to make the due and proper entry of the said syrup of sugar-cane, upon and for importation, and to give the proper bond or bonds for the duties thereon, to wit, the bonds of John B. Balester, one of the plaintiffs, with a good and sufficient surety for the payment of duties, at the rate of fifteen per cent. *ad valorem* upon the said syrup, and to do every other act required by law to be done by the said plaintiffs for obtaining the proper permit for the landing of the said syrup, and the taking of the same by the said plaintiffs to be used or disposed of as they should see fit, and the said plaintiffs then and there required the said collector to receive the said entry and such bond or bonds, and to give such proper permit as aforesaid, or to permit the said plaintiffs to take possession of the said goods; yet the said defendant did not and would not, as he was in law bound to do, receive or take the entry of the said syrup, or the proper bond or bonds for the duties thereon, or give to the said plaintiffs such proper permit as aforesaid, or any permit whatever, or permit the said plaintiffs to land or take the said goods, to be used and disposed of as

they should see fit, although the said defendant acknowledged himself satisfied with the sufficiency of the offer or tender so made by the said plaintiffs as aforesaid, in regard to the bonds so offered as aforesaid, and in regard to every matter and thing required of the plaintiffs to complete such entry as aforesaid, and then and there discharge the said plaintiffs from any further or other offer in the premises; but on the contrary thereof, the said defendant took the said goods into his own possession, and still keeps them in his own possession, and refuses to deliver them to the said plaintiff, or to permit the said plaintiffs to have or take the same. By reason whereof the said plaintiffs have been and still are deprived of the said syrup, and all use or benefit thereof, and of large profits thereon, and the same have become of no value whatever to the plaintiffs; and sundry bills of exchange for a large sum, to wit, ten thousand dollars drawn on the faith of the consignment of the said syrup, by the said plaintiffs, on certain persons doing business as merchants at New York, in the city and county aforesaid, and which persons were the intended consignees of the said syrup, were refused acceptance and were protested, and the plaintiffs thereby became chargeable with and obliged to pay, and did pay, heavy damages on that account, to wit, two thousand dollars at the place last aforesaid. And the said plaintiffs were also deprived of great benefit which would have resulted to them from the manufacture of the said syrup, the same having been imported by them for that purpose. For that, whereas the said plaintiffs heretofore, to wit, on the first day of October, in the year of our Lord one thousand eight hundred and thirty-two, at the city and in the county of New York, were lawfully possessed, as of their own property, of a certain large quantity, to wit, one hundred and seventy-eight casks of syrup of sugar-cane, of great value, to wit, of the value of ten thousand dollars, and being so possessed thereof, the said plaintiff afterwards, to wit, on the second day of October, in the year first above mentioned, at the place aforesaid, casually lost the said syrup of sugar-cane out of their possession; and the same afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, came to the possession of the said defendant by finding; yet the said defendant well knowing the said syrup of sugar-cane to be the property of the said plaintiffs, and of right to belong and appertain to the said plaintiffs, but contriving and fraudulently intending, craftily and subtilely, to deceive and defraud the said plaintiffs in this behalf, has not yet delivered the said syrup of sugar-cane, or any part thereof, to the said plaintiffs, though often requested so to do, the said defendant has hitherto wholly refused; and afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, converted and disposed of the said syrup of sugar-cane to his own use. And whereas, also, at the time hereinafter mentioned, the said plaintiffs were merchants at Guayama, in Porto Rico, to wit, at the city and county of New York under the name and firm of W. H. Tracy & Co. And whereas, also, heretofore, to wit, on the seventeenth day of October, in the year of our Lord one thousand eight hundred and thirty-two, the said defendant was, and still is, the collector of the customs for the district of the city of New York, under and according to the laws of the United States of America, and acting in the said office as such, and the said plaintiffs, on the day and year and at the place aforesaid, were the owners of divers, to wit, other one hundred and seventy-eight casks of syrup of sugar cane, and had imported the same from the island of Porto Rico, in the West Indies, into the port of New York, to wit, in the city and county of New York, had imported the said syrup for the purpose and with the intent of manufacturing the same into sugar, and were desirous of entering the same with the said defendant, as collector as aforesaid, and of securing or paying the duties thereon, required by law in such cases. And whereas the said syrup was, by the several

bills of lading thereof, made deliverable at the port of New York aforesaid, to the order of the plaintiffs, who were the shippers thereof, and by their indorsement of the said bills of lading, the same was made deliverable to Frederick A. Tracy, of the city of New York, who was the carrier thereof. And whereas the said Frederick A. Tracy afterwards, to wit, on the day and year and at the city of New York aforesaid, applied to the said defendant upon and after the arrival of the said casks of syrup respectively, and gave him notice of the importation thereof as aforesaid, and exhibited to him the bills of lading and the original invoices of the said syrup, and then and there offered to make entry thereof, and to give bonds for the duties which were by law payable thereon, to wit, at the rate of fifteen per cent. *ad valorem;* but the said defendant then and there refused to admit the said goods to entry, unless the said Frederick A. Tracy would give bonds for such duties at a much larger rate, to wit, at the rate of three cents per pound for every pound of the said syrup. And the said defendant, thereupon, took the said goods into his own possession, to wit, into one of the public stores at Brooklyn, to wit, at New York aforesaid.

And whereas the said plaintiffs afterwards, in person, that is to say, by the said John B. Balestier, on the day and year and at the place aforesaid, applied to the said defendant and exhibited to him the said original invoices and bills of lading of the said casks of syrup of sugar-cane, and then and there offered to make oath to the same, and to do every act required by law to secure or pay the duties thereon, at the rate of fifteen per cent. ad valorem; nevertheless, the said defendant, although he then and there declared himself satisfied with the sufficiency of the offer or tender of the plaintiffs' for the purpose of making an entry, and taking possession of the said goods in every particular, except as to the amount of the said duties for which he required bonds in much larger amount, to wit, at the rate of three cents per pound for every pound of the said syrup, and although the said defendant then and there discharged the said plaintiffs from making any other offer or tender in regard to the entry of the said syrup, and expressly waived any further act or tender concerning the same, nevertheless the said defendant refused to allow the said plaintiffs to enter and secure the duties on the said syrup at the rate required by law in that behalf, and refused to deliver the said syrup to the said plaintiffs for a long space of time, to wit, for the space of eighteen months, when the same were delivered up by the said defendant to said plaintiffs, on the payment of the duties at the rate of fifteen per cent. *ad valorem*, by means of all which premises the said plaintiffs were deprived of the great benefit which they would have derived from the manufacture of the said syrup into sugar. And the said syrup was greatly damaged by being kept on hand, being injured in quality, and lessened in its intrinsic value thereby, and a great part thereof was moreover lost by leakage from the casks in which it was contained, to the damage of the said plaintiffs of ten thousand dollars, and thereof the said plaintiffs brings suit, &c.

And the said Samuel Swartwout, defendant in this suit, by James A. Hamilton, his attorney, comes and defends the wrong and injury when, &c., and says that he is not guilty of the premises above laid to his charge in manner and form as the said plaintiffs in this suit have above thereof complained against him, and of this he puts himself upon the country, and the said plaintiffs likewise, &c.

Therefore, let there come a jury thereof before the judges aforesaid, at the city hall of the city of New York on the first Monday of April next, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c., the same day is given to the parties there, &c.

At which day, that is to say, on the day and at the place last above mentioned, before the judges aforesaid, come as well the above named plaintiffs as the

above named defendant, by their respective attornies above mentioned. And the jurors of the jury whereof mention is above made, being summoned also come, who, to speak the truth of the matters above contained, being chosen, tried, and sworn, say upon their oath that the said defendant is guilty of the premises above laid to his charge, in manner and form as the said plaintiffs in this suit have above thereof complained against him; and they assess the damages of the said plaintiffs by reason of the premises, over and above their costs and charges by them about their suit in this behalf expended, to six cents, and for those costs and charges six cents.

Therefore, it is considered that the said plaintiffs do recover against the said defendant their damages, costs, and charges, by the jurors aforesaid, in form aforesaid; which said damages, costs, and charges in the whole amount to twelve cents, and the said defendant in mercy, &c.

Judgment signed this 6th day of January, 1835.

FRED. J. BETTS, *Clerk.*

Bill of Exceptions.

Circuit Court United States Southern District of New York. In the Second Circuit.

WILLIAM H. TRACY and JOHN B. BALESTIER, *vs.* SAMUEL SWARTWOUT.

Which said issue in form aforesaid, joined afterwards, to wit, at a circuit court of the United States for the southern district of New York, within the second circuit, held at the city hall of the city of New York in April term, in the year one thousand eight hundred and thirty-four, came on to be tried by a jury, the body of the said circuit for that purpose duly impannelled. At which day came there as well the said plaintiffs as the said defendant, by their respective attornies aforesaid, and the jurors of the jury aforesaid, impannelled to try the said issue, being called, also come, and were then and there in due manner chosen and sworn to try the same issue; and upon the trial of that issue the counsel learned in the law of the said plaintiffs, to maintain and prove the said issue, on their part called James F. Depeyster, who testified that he was the consignee of the schooner Henry, which arrived at the port of New York in September, eighteen hundred and thirty-two, with one hundred and thirty-three casks of syrup of sugar-cane from Guyama, Porto Rico, shipped by William H. Tracy & Co. to order, and could find no one to take it, and ascertaining the article was syrup, I got an order to place it in the public store. G. S. Perry was the master, he is now absent.

The following is the copy of the bills of lading of said syrup, the same being subscribed by said Perry.

"Shipped in good order and well conditioned, by William H. Tracy & Co., on board the schooner called the Henry, whereof G. S. Perry is master, now lying in the port of Guyama and bound for New York to-day, sixty casks of molasses, being marked and numbered as in the margin, are to be delivered in the like order and condition at the port of New York, (the dangers of the seas only excepted)," unto order or assigns, he or they paying freight for the said molasses four dollars and one quarter per

D S
A B 60

110 galls. gross guage, delivered with no primage and average accustomed. In witness whereof the master or purser of the said vessel hath affirmed to four bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Guyama the day of July, 1832.

GEO. S. PERRY.

Shipped in good order and well conditioned, by William H. Tracy & Co., on board the schooner called the Henry, whereof G. S. Perry is master, now lying in the port of Guyama bound for New York, to-day, seventy-three casks of molasses, marked and numbered as in the margin, and are to be delivered in the like order and condition at the port of New York, "the dangers of the sea only excepted," unto order or assigns, he or they paying freight for the said molasses four dollars and one quarter per 110 gallons gross guage, delivered with primage and average accustomed. In witness whereof the master or purser of the said vessel hath affirmed to four bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

D & S
A & B 62
D & S 11
73

Dated Guyama, the 28th day of July, 1832. GEO. S. PERRY.

Cross examined.—The article was shipped as molasses; witness don't know what it was; if a specified duty was charged, it would not pay freight; if an ad valorem duty was imposed, it would pay a profit; the article came from Guyama.

The plaintiffs' counsel then called Giulean Mearle. He was the consignee of the brig Caroline, which arrived in September, eighteen hundred and thirty-two; she brought eighteen hogsheads of syrup of molasses, shipped by William H. Tracy & Co. L. Prentis was the master. Witness could find no claimant of the property, and it was sent to the public store. It was consigned to order; the master is now at sea; the signature to the bill of lading now produced is in his handwriting, the following is a copy:

"Shipped in good order, and well conditioned, by William H. Tracy & Co., on board the brig called the Caroline, whereof S. Prentis master, now lying in the port of Guyama, and bound for New York, to say eighteen casks molasses, being marked and numbered as in the margin, and are to be delivered in the like order and condition at the port of New York, "the dangers of the sea only excepted," unto order or assigns, he or they paying freight for the said molasses, four dollars and twenty-five cents per one hundred and ten gallons, gross guage, delivered without primage and average accustomed.

X
W'
A w B 7
D & S 8
A B

"In witness whereof the master or purser of the said vessel hath affirmed to four bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void. Date in Guyama, the third day of August, 1832.

L. PRENTISS."

Henry Butter was then called for plaintiffs. He was clerk of J. P. Thurston, & Co., in August, eighteen hundred and thirty-two, when the brig Ganges, Captain Stackpole, with twenty-seven casks of syrup of sugar-cane, shipped by William H. Tracy & Co., from Porto Rico, consigned to order. The casks of syrup were put next to the public store at Brooklyn. The bill of lading was to order; the signature is in the handwriting of Captain Stackpole, who is now at sea. The following is a copy of the bill of lading:

"Shipped in good order and well conditioned, by William H. Tracy, & Co., on board the brig called the Ganges, whereof D. Stackpole is master, now lying at the port of Tobas, and bound for New York to-day, twenty-seven casks of molasses, on deck; being marked and numbered as in the margin, and are to be delivered in the like order and condition at the port of New York, "the dangers of the sea only excepted," unto order or assigns, he or they paying freight for the said molasses four dollars and twenty-five cents per one hundred and ten gallons, gross guage without primage and average accustomed; in witness whereof the master or purser hath affirmed to four bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

D & S 4

"Dated in Tobos, the sixth day of July, 1832.

DAVID STACKPOLE.

Cross examined.—Being shown the manifest, which states said casks to be casks of molasses; proved captain's signature.

J. S. Carpenter was then called by plaintiffs. He was a clerk of F. A. Tracy when the vessels arrived with the syrup aforesaid; F. A. Tracy was the consignee; the goods were all shipped to order; he was then at Norwich, Connecticut, and witness did his business at the custom house, under a power of attorney, which was lodged there; within fifteen days of the arrival of each vessel witness went to the custom house, and offered to enter the syrup at fifteen per cent. ad valorem. He showed the invoice and bill of lading to the collector; witness presented the entries also. The defendant said he had instructions from the department not to permit the entry at less than three cents per pound; He said he would permit the entry at fifteen per cent. ad valorem, but should require bonds at three cents per pound. The following are copies of the invoice presented to the collector.

Invoice of sixty casks of syrup, boiled down from the real cane juice, shipped by William H. Tracy & Co., on board the schooner Henry, George S. Perry master, bound for New York, and there consigned to order, for account and risk of whomsoever it may concern.

60 casks of syrup, 6,880 gallons, 15-110		908 17
Charges.		
Duties on 6,880 gallons,	62 54	
Balance c|.	63	
Premium on half 12 c|. c d s	3 94	
7,075 gallons empty casks, 5-110,	321 59	
		388 70
		1,326 87
Commission, 2½ c|.		33 17
		1,360 04

E. E. Guyama, 24th July, 1832.
WM. H. TRACY & Co.

GUYAMA, P. R., *July* 24, 1834.

I, John B. Balestier, merchant, solemnly and sincerely and truly swear, that I, as partner in the house doing business in this place of Guyama, under the firm of William H. Tracy & Co., did truly and lawfully purchase the merchandize, mentioned as syrup, boiled down from the real cane juice, as specified in the invoice by me subscribed with the proper signature of the firm, and here produced to Wm. H. Tracy, esq., the consul of the United States of America, and intended to be shipped from the port, and consigned to order for the port of New York, in the United States of America; that the sum of one thousand three hundred and sixty dollars four cents, legal currency of this island, exhibited in the said invoice, is the fair value of said syrup in its actual state of manufacture at this place. That we, the said shippers, are not the manufacturers, in whole or part, of the said syrup as aforesaid; and that we are not, directly nor indirectly, concerned in the profits of any art or trade by which the said syrup has been brought to its present state of manufacture. So help me God.

J. B. BALESTIER.

[L. S.] CONSULATE OF THE U. S. AMERICA,
Guyama, July 24, 1832.

Sworn before me this day. In testimony whereof I have hereunto signed my name and affixed my seal of office.

W. H. TRACY, C. C. A.

Invoice of 18 casks of syrup, boiled down from the real cane juice, shipped by William H. Tracy & Co., on board the brig Caroline, L. Prentiss, master, bound to New York, and there consigned to order and risk of whomsovever it may concern.

W 3
W 7
A B
D & S
A B. 8.

Eighteen casks with 2101 gallons of syrup from real cane juice, 15-110,			$315 15
Charges.			
Duties on 2101 gallons, $110, - -	$19 10		
Balance c|. - -	19		
Half amount in gold, G. 6,412½ - -	1 20		
2175 gallons empty casks, a 5-110 - -	98 86		
Cooperage 10 hhds. - -	5 00		
		124 35	
		439 50	
Commission, 2½ c|. -		10 99	
		$450 49	

E. E. Guyama, 3d August, 1832.
WM. H. TRACY.

GUYAMA, P. R., *August* 2, 1832.

I, John B. Balestier, merchant, solemnly, sincerely, and truly swear that I, as partner in the house doing business in this place of Guyama, under the

firm of Wm. H. Tracy & Co., did truly and lawfully purchase the merchandize, mentioned as syrup boiled down from the real cane juice, as specified in the invoice, by me subscribed with the signature of the firm, there produced to Wm. H. Tracy, the consul of the United States of America, and intended to be shipped from this port, consigned to order for the port of New York, in the United States of America; that the sum of four hundred and fifty dollars and forty-nine cents, legal currency of the island, exhibited with the said invoice, is the true value of said syrup in its actual state of manufacture at this place. That we, the said shippers, are not the manufacturers, in whole or part, of said syrup as aforesaid; and that we are not, directly or indirectly, concerned in the profits of any art or trade by which the said syrup has been brought to its present state of manufacture. So help me God.

J. B. BALESTIER.

CONSULATE OF THE U. S. OF AMERICA,
Guyama, P. R., August 4, 1832.

[L. S.] Sworn before me this day. In testimony whereof I have hereunto signed my name and affixed my seal of office.

W. H. TRACY, C. C. A.

Invoice of 27 casks of syrup, boiled down from the real cane juice, shipped by Wm. H. Tracy, on board the brig Ganges, Stackpole master, from Tobos, bound for New York, and there consigned for account and risk of whomsoever it may concern.

D S	27 hhds. of syrup, boiled down from the real cane juice, 2,807 gs. 15-110,				$331 74
	Charges.				
	Duties on 2807 gs. 1-110	-	-	$25 32	
	Balance 1,	-	-	26	
	Prem. on half 14,	-	-	1 80	
2,950	empty casks	5-114	-	104 09	
					161 67
					493 41
	Commissions 2½		-		12 33
					$505 74

E. E. Guyama, 6th July, 1832.
WM. H. TRACY & Co.

GUYAMA, P. R., *July 6th*, 1832.

I, John B. Balastier, merchant, solemnly, sincerely, and truly swear that I, as partner in the house doing business in this place of Guyama, under the firm of William H. Tracy & Co., did truly and lawfully purchase the merchandize, mentioned as "syrup boiled down from the real cane juice," as specified in the invoice by me subscribed in the proper signature of the firm, and here produced to William H. Tracy, esq., the consul of the U. S., and

intended to be shipped from this port, consigned to order of for the port of New York, in the said State; that the sum of five hundred and four dollars and seventy-five cents, legal currency of this island, exhibited in the said invoice, is the true value of said syrup in its actual state of manufacture at this place. That we the said shippers are not the manufacturers of the said syrup as aforesaid; and that we are not, directly nor indirectly concerned in the profits of any art or trade by which the said syrup has been brought to its present state of manufacture. So help me God.

J. B. BALESTIER.

Sworn before me in Guyama, July 6th, 1832.

WM. H. TRACY, C. C. A.

CONSULAR COMMERCIAL AGENCY, U. S.
Guyama, P. R., July 6th, 1832.

The rate of exchange difference of value between the legal currency of this island and currency of the United States of America is fourteen per centum.

[L. S.] In testimony whereof I have set my hand and affixed my official seal.

WM. H. TRACY, C. C. A.

Invoice of 73 hhds. of syrup, boiled down from the real cane juice, shipped by William H. Tracy & Co., on board the schooner Henry, George L. Perry master, bound for New York, and there consigned to order for account and risk of whomsoever it may concern.

62 casks of syrup, 7,514 gls.				
11 do. do. 1,141				
73	8,655 gls.	15-100 -		$1,180 23
Charges.				
Duties on 8,655 gls. 1-110		- -	$78 68	
Balance c|.	-	- -	79	
Prem. on half, 12 c|.	-	- -	1 96	
8,904 gallons empty casks 5-110		-	404 73	
				489 16
				1,669 09
		Commission 2½ c|. -		41 73
				$1,711 12

E. E. Guyama, 24th of July, 1832.

WM. H. TRACY & Co.

GUYAMA, P. R., *July* 24, 1832.

I, John B. Balestier, merchant, solemnly, sincerely, and truly swear, that I, as partner in the house doing business in the place of Guyama, under the firm of Wm. H. Tracy & Co. did truly and lawfully purchase the merchandize, mentioned as syrup boiled down from the real cane juice, as specified in the invoice by me subscribed with the proper signature of the firm, and here

produced to Wm. H. Tracy, esq., the consul of the U. S. of America, and intended to be shipped from this port and consigned to order for the port of New York, in the U. S. of America. That the sum of one thousand seven hundred and eleven dollars and twelve cents, legal currency of this island, exhibited in the said invoice, is the true nature of said syrup, in its actual state of manufacture at this place. That we, the said shippers, are not the manufacturers, in part or whole, of the said syrup as aforesaid; and that we are not, directly nor indirectly, concerned in the profits of any art or trade by which the said syrup has been brought to its present state of manufacture. So help me God.

JOHN B. BALESTIER.

CONSULATE OF THE U. S. OF AMERICA,
Guyama, July 22, 1832.

[L. S.] Sworn before me this day. In testimony whereof I have hereunto signed my name and affixed my seal of office.

WM. H. TRACY, C. C. A.

The collector objected to nothing but the duties; Wm. H. Tracy & Co. reside at Porto Rico; they are the plaintiffs; the syrup belonged to them. Witness had, previous to these importations, entered them syrups at fifteen per cent. *ad valorem*, and in all cases they were mentioned as molasses in the bills of lading and manifests.

Cross examined.—Said that William H. Tracy was the American consul at Porto Rico, and resided there; John B. Balestier also resided at Porto Rico; the plaintiffs were both non-residents. He did not recollect saying on former trial, that he never made out an entry; the collector told witness the first time he spoke to him on the subject, that he would charge three cents per pound. Witness endeavored to ascertain what was the value of the goods; the article would not have paid the duty at three cents per pound; the collector said he might enter at fifteen per cent, and that the bond should be filled up for three cents per pound; he took a witness with him to offer to enter; Balestier, one of the plaintiffs, arrived here three or four months afterwards; bills had been drawn on the faith of the consignments. When the collector refused to have the goods entered at fifteen per cent. witness endeavored to ascertain the value of the syrup; it would have about paid the duty; when the collector insisted the bonds should be three cents a pound witness declined entering.

E. A. Weeks. The testimony of this witness was read from the case in the superior court, where the cause had been once tried. The following is a copy:

"He states, that on the seventeenth of October last he went with Mr. John B. Balestier, one of the plaintiffs, to the collector; where Mr. Balestier read to the collector, and then delivered to the collector the letter of which the following is a copy:

SAMUEL SWARTWOUT, Esq.,
Collector of New York.

Sir: I have been in hopes for some time past that after full deliberation the syrup of sugar-cane imported by my house, consigned to order as per memo-

randum, and which Frederick A. Tracy, esq., offered to bond some time since, would be admitted to entry upon payment of duties at fifteen c|. *ad valorem*, or according to the law as it stood previous to the fourteenth of July last.

In order to avoid controversy, I now offer to exhibit, and do herewith exhibit, the original invoices of the article with the consular certificates and bills of lading, and am ready to make oath to the same and to the ownership again if required, and to do each and every act required by law, in order to enter the said goods and secure the duties thereon, and in particular, I am ready to give bonds in the usual mode for duties on the said syrup at fifteen c|. *ad valorem*, myself as principal, with William Snelling & Co. or other satisfactory sureties. I beg, therefore, to be informed whether you will admit the said goods to enter on such bonds aforesaid; and I should be glad also to know whether you require a formal tender of a bond for the duties of 15 c|. or of any oath or paper required by law to make a regular entry of the said goods.

Respectfully, your obedient servant,

J. B. BALESTIER.

N. B. If there are any charges of cooperage or otherwise, I am ready and offer to pay them, and you will of course consider this as a demand of the property on the payment of duties and all charges.

Memorandum of importations of syrup offered to be bonded at fifteen per cent. *ad valorem*.

					VALUE. Cr.
1	invoice by schooner Henry,	73	casks,	- -	$1,711 12
1	do do do	60	do	- -	1,360 04
1	do brig Ganges,	27	do	- -	505 74
1	do do Caroline,	18	do	- -	459 49
		178			$4,027 39

Say one hundred and seventy-eight casks of syrup of sugar-cane at invoice cost of four thousand and twenty-seven dollars 39-100 currency of the island of Porto Rico.

New York, 16th of October, 1832.

Mr. Balestier at the same time exhibited to the collector the bills of lading of the property, and also the invoice with oaths and certificates of which the foregoing are copies.

The collector said, after the letter was read, that he could not act; he could not permit him to enter the goods upon the terms and at the rate of duty mentioned in the letter, because it was contrary to his instructions from the department. The collector did not refuse an entry to be made, but insisted that the goods should pay a higher rate of duty than 15 c|. *ad valorem*. The difference was as to the rate of duty to which the goods were subjected. Mr. Balestier then asked him if he required any other form whatever or tender. The collector answered that he required nothing else to be done by him; he wished no formal tender; all had been done in that respect that was required.

On cross examination, he said that the collector refused to permit Mr. Balestier to enter the goods on the terms proposed in the letter. He wished no formal tender. He made a memorandum of the collector's answer at the time.

Henry Boese was then called by plaintiffs' counsel. He had been acquainted with the syrup of sugar-cane between four and five years; had been a sugar

baker twenty years. Three or four weeks after the arrival of the syrup before mentioned he went to Brooklyn to take samples; he took samples; the article was cane juice syrup; he had previously manufactured some with the same marks; he supposed from the same shippers. The syrup in question was the same as he had used; it was a good article.

Cross examined.—This article, when manufactured, goes through a mill; it is then boiled to a lower degree than is sufficient to produce chrystalization; it is boiled to about thirty-six degrees; it chrystizes at about forty. It is usually applied to make sugar, sometimes for cordial distillers.

Andrew Tombs called by plaintiffs. He was the keeper of the public stores at Brooklyn. August twenty-fifth, eighteen hundred and thirty-two, he received from brig Ganges 27 casks of syrup.

August 29, 1832, per brig Caroline, 18 do do.
Do 23, do schooner Henry, 133 do do.

He afterwards delivered same as follows, to the order of F. A. Tracy:

July 31, 1833, casks per brig Caroline.
From do do do to 27th August, casks per schooner Henry.
Sept. 2, do do do do brig Ganges.

J. S. Carpenter called again. The said goods were bonded when delivered by Captain Tombs at fifteen per cent. *ad valorem*. They sold same to John Adronaux, and to Samuel Blackwell, and to C. De Forest, all at thirty-one cents except the ten casks to De Forest, which were sold at thirty-three cents. The total amount sold was eighteen thousand three hundred and fifty gallons.

Samuel S. Blackwell. He bought thirteen thousand seven hundred and fifty-eight gallons of said syrup. He had not been very long acquainted with the article, but he had been many years acquainted with the manufacture of sugar. The syrup in question was acid when he bought it; was very inferior. In its fresh state it would have been worth from eight to ten cents more per gallon. He bought it to make sugar; a considerable portion of it was unfit for that purpose. It was an article which would deteriorate by standing. The loss by evaporation was from five to ten per cent. in the course of a year. The loss by leakage would depend on the casks; there would be considerable loss with good casks.

Cross examined.—His business was that of a sugar refiner. He had not been concerned in this article as a speculation; never conferred with others about imposing it. This syrup is not acid when fresh. He purchased a parcel a month before, paid twenty-eight cents, that had been detained here under circumstances similar to those in this case; he had also bought some of Archibald, which had been detained in like manner. The fresh syrup usually sells a few cents more than molasses; molasses being from thirty-six to forty cents.

It was then admitted by the district attorney that it had been agreed, when this syrup was delivered up, that it should be delivered without prejudice to the rights of the plaintiffs.

Robert Sedgwick, being sworn and examined, says he was the counsel who tried this cause in the superior court of the city of New York; that the cause was argued at the bar of that court on a case; that the case was prepared from the notes of witness and Mr. Field; that he believes the testimony taken in that trial is correctly set forth in the case as settled and served on the defendant's attorney.

The case being produced and shown to witness, he says that in the testimony of Jacob S. Carpenter in the case, Carpenter swore he never made out, signed, or presented an entry, nor was one ever made out. It was admitted by the

counsel of the plaintiffs that the defendant acted throughout with entire good faith, and under instructions from the treasury department.

The plaintiffs' counsel offered to prove that the fact was that the plaintiffs were unable to furnish bonds for duties at three cents per pound, though he had not stated to the defendant at the time of the offering to make entry, that he could not enter the goods at three cents per pound, because he could not give security for the sum that the duties thus estimated would amount to.

The court overruled this testimony, to which the plaintiffs' counsel excepted. Upon this evidence the court instructed the jury that, admitting the merchandize in question was only subject to an ad valorem duty of fifteen per cent., yet the circumstances under which the dispute about the rate of duties arose ought not to subject the collector to the payment of more than nominal damages. The collector was pursuing what he believed to be the true construction of the law, and whatever injury the plaintiffs may have sustained in receiving their goods at an earlier day, grew out of their own conduct in not entering the goods in the manner offered by the collector at fifteen per cent. *ad valorem*, taking the bond, however, to secure the payment of three cents per pound, if such be thereafter decided to be the duties demandable, merely placing the case in a situation to have the question judicially decided as to the rate of duty, no intimation at the time being given that it would ocasion any inconvenience to the plaintiffs to give the bond so required by the collector.

And the said jury did there and then give their verdict for the said plaintiffs for six cents damages and six cents costs. And inasmuch as the several matters aforesaid so produced and given in evidence on the part of the said plaintiffs and by their counsel aforesaid insisted on as aforesaid, do not appear by the record and verdict aforesaid, the said counsel for the said plaintiffs did then and there propose their aforesaid exceptions to the opinion of the said judges, and requested them to put their seals to this bill of exceptions, containing the said several matters so produced and given in evidence and insisted on by the said plaintiffs according to the form of the statute in such case made and provided; and thereupon the said judges, at the request of the said counsel for the plaintiffs, did put their seals to this bill of exceptions pursuant to the aforesaid statute in such case made and provided, the day of April, A. D. 1834.

SMITH THOMPSON.

Supreme Court of the United States.

WILLIAM H. TRACY and JOHN B. BALESTIER, Plaintiffs in Error.
vs.
SAMUEL SWARTWOUT, Defendant in Error.

Afterwards, that is to say, on the second Monday of January, eighteen hundred and thirty-five, before the justices of the Supreme Court of the United States of America at the city of Washington, come the said William H. Tracy and John B. Balestier, by Robert Sedgwick, their attorney, and say that in the record and proceedings aforesaid, and in giving the judgment aforesaid, there is manifest error, in this, that the judgment aforesaid, by the record aforesaid, appears to have been given for the plaintiff against the said defendant for merely nominal damages, whereas, by the law of the land, the said judgment ought to have been given for all the damages which the said plaintiffs actually sustained

by reason of the premises in the said declaration mentioned; and there is also error in this, that by the bill of exceptions and proceedings aforesaid, it appears that the said circuit court of the United States of America for the southern district of New York, in the second circuit, overruled certain testimony offered on the part of the said plaintiffs, which, by the law of the land, ought not to have been overruled, but ought to have been admitted and received; and there is error also in this, that by the bill of exceptions proceedings aforesaid, it appears that the said circuit court instructed the jury by whom the said issue was tried, that the circumstances under which the dispute about the rate of duties arose ought not to subject the defendants to the payment of more than nominal damages, and that whatever injury the plaintiffs may have sustained in not receiving their goods at an earlier day, grew out of their own conduct in not entering the goods in the manner offered by the defendant, at fifteen per cent. *ad valorem*, taking the bond, however, to secure the payment of three cents per pound, if such should be thereafter decided to be the duty demandable. Whereas, by the law of the land, the said court ought not so to have instructed the jury, but ought to have instructed them to the contrary thereof, and that the circumstances of the case ought to subject the defendant to the payment of more than nominal damages, and of all the damages which the said plaintiff had actually sustained by reason of the premises in the said declaration mentioned.

And the said plaintiffs pray that the judgment aforesaid for the errors aforesaid, and for other errors in the said record and proceedings being, may be reversed, annulled, and altogether holden for nought, and that they may be restored to all things which they have lost by occasion of the said judgment, &c.

R. SEDGWICK,
Attorney, and of counsel for Plaintiffs in error.

UNITED STATES OF AMERICA, }
Southern District of New York. } *ss.*

I, Frederick J. Betts, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing writings are true copies of their respective originals, on file, and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this tenth day of January, in the year of our Lord one thousand eight hundred and thirty-four, and of the independence of the said United States the fifty-ninth.

[L. S.] FRED. J. BETTS, *Clerk.*